HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No.13857 of 2007

Between:

Inderpal Singh

... Petitioner

And

The Greater Hyderabad Municipal Corporation,
Rep. by its Commissioner, Hyderabad
& others

... Respondents

:: O R D E R ::

Counsel for the petitioner : Shri Bajrang Singh Thakur

July 2, 2007

Per G.S. Singhvi, CJ

In this petition, the petitioner has made the following substantive prayer:

> It is therefore prayed that this Hon'ble Court may be pleased to issue writ or order particularly writ in the nature of Mandamus declaring the inaction of respondent Nos.1 to 4 herein in taking action against respondent No.5 herein for making illegal construction of ground and first floor without permission from respondent Nos.2 and 3 herein and for not taking action by respondent No.4 herein for illegally grabbing and illegally constructing the building over an extent of more than 30 sq. yds. of open land of respondent No.4 by

respondent No.5 herein in pursuance of the complaints of the petitioner dt.2-4-2007 to R.2, dt.09.04.2007 to the then Commissioner of H.M.C. (at present R.1), complaint dt.27.4.2007 to R.4, dt.28.4.2007 to R.2, dt.09.05.2007 & 15.6.2007 to R.3 as arbitrary, illegal and pass any such other orders in the circumstances of the case for which the petitioner is legally entitled and this Hon'ble Court deems fit and proper in the interest of justice.

It is further submitted that as the official respondents are not taking action the respondent No.5 herein for making illegal constructions over his land and the land of the respondent No.4, the respondent No.5 is making illegal constructions in ground and 1st floor, at present constructing rooms in the ground floor, unauthorized by raising stairs, balconies etc., without leaving any free area resulting encroachment of my property over W.C., on North West corner and causing effect to my ventilating, free access of air etc. in that case my property rights will be effected and I have to face irreparable loss and injury to my property rights for the illegal acts of the respondent No.5, therefore in the interests of justice it is therefore prayed that this Hon'ble Court may be pleased to pass an order directing the respondents Nos. 2 to 4 herein to take immediate action on my complaints dt.2.4.2007 to R.2 dt. 09.04.2007 to the then Commissioner of H.M.C. (at present R1) complaint dt. 27.04.2007 to R.4, dt. 28.4.2007 to R2, dt. 09.05.2007 & 15.06.2007 to R.3, by directing the respondent No.5 to stop all further construction activities forth with, till the finalization of the W.P., in the interests of justice."

The above noted prayer is founded on the assertion that after purchasing premises bearing No.11-1-147, 167-C-Class constructed by Andhra Pradesh Housing Board (for short, 'the Board') at Char Khandil, Agapura, Hyderabad, respondent No.5 has raised illegal construction. In the affidavit filed by him, the petitioner averred that respondent No.5 made construction without obtaining permission from respondent Nos.1 to 3 and in total violation of the building bye-laws and zoning regulations. He further averred that despite repeated complaints and representations made to the functionaries of the then Municipal Corporation of Hyderabad (now Greater Hyderabad Municipal Corporation) and the Board, action has not been taken to demolish the illegal construction in its entirety and as a result of that, his right to enjoyment of property bearing No.11-1-147, 166-C-Class is being adversely affected.

We have heard Shri Bajrang Singh Thakur. In our opinion, the writ petition is liable to be dismissed because the petitioner has not produced any tangible evidence to prima facie establish the accusation that respondent No.5 has raised construction in premises bearing No.11-1-147, 167-C-Class and how the disputed construction is illegal and whether the same is being raised by respondent No.5.

The question whether the disputed construction has been raised by respondent No.5 and the same is in violation of the sanctioned plan, zoning regulation, etc. can be decided only on the basis of the evidence which the parties can produce before an appropriate judicial forum. The photographs annexed with the writ petition do not show that the disputed construction is illegal and the same has been raised by respondent No.5. Therefore, in exercise of power under Article 226 of the Constitution of India, this Court cannot convert itself into civil Court and make enquiry into contentious issue of fact and then decide whether the disputed construction is being raised by respondent No.5 without obtaining the requisite permission/necessary sanction.

With the above observation, the writ petition is dismissed leaving the petitioner free to avail remedy by filing civil suit.

As a sequel to dismissal of the writ petition, WPMP No.17389 of 2007 filed by the petitioner for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

July 2, 2007

C.V. NAGARJUNA REDDY, J

svs